

MISSOURI COURT OF APPEALS WESTERN DISTRICT

ROBERT D. CAIN, et al.,

Respondents,

v.

SHERRI PORTER,

Appellant.

DOCKET NUMBER WD69615

Date: March 29, 2010

Appeal from:
JACKSON COUNTY Circuit Court
The Honorable Thomas C. Clark, Judge

Appellate Judges:
Division One: Alok Ahuja, Presiding Judge, Thomas H. Newton, Chief Judge, and Harold L. Lowenstein, Judge

Attorneys:
James H. Thompson, Esq., Jr., North Kansas City, MO, for appellant.
John R. Weist, Esq., for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

ROBERT D. CAIN, et al.

Respondents,

v.

SHERRI PORTER,

Appellant.

WD69615

JACKSON COUNTY

In November 2000, Sherri Porter rear-ended a truck driven by Robert Cain in which his wife, Elizabeth Cain, was a passenger. In March 2004, Porter filed for Chapter 13 bankruptcy protection. In August 2005, during the pendency of the bankruptcy proceeding, Robert and Elizabeth Cain filed a personal injury petition naming Porter as the defendant. Porter filed an answer and amended her schedule of creditors to include the Cains. The bankruptcy court never granted relief from the automatic stay to permit this action to proceed.

The case was tried on September 11, 2006. The Cains appeared with counsel. Neither Porter nor her counsel appeared. The trial court took evidence from the Cains and entered judgment against Porter in the amount of \$200,100.24.

Porter moved to set aside the judgment. The trial court denied the motion. Porter then filed a motion to reconsider, in which she asserted, for the first time, that the trial court was without subject matter jurisdiction to enter judgment because the automatic stay in bankruptcy had not been lifted. The trial court denied the motion. Porter filed an appeal, but later dismissed it. Instead, Porter filed a new motion pursuant to Rule 74.06(b)(4), arguing that the judgment was void because it was entered in violation of the automatic stay in bankruptcy. The trial court denied the motion, on the basis that it raised the same issues as Porter's earlier motion for reconsideration. The trial court also held that, by her conduct, Porter had waived her right to rely on the bankruptcy stay. This appeal follows.

AFFIRMED

Opinion Holds:

Even if the bankruptcy-stay issue is properly characterized as one of subject-matter jurisdiction, Porter was entitled to one – and only one – opportunity to litigate it. She did so in her motion for reconsideration, and appealed the trial court's adverse ruling. She did not

prosecute her appeal of that ruling to its conclusion, however, instead filing a successive motion raising the same issue. Preclusion principles bar a party from raising arguments in a Rule 74.06(b) motion, where that party has previously raised the identical arguments. This principle applies even to jurisdictional issues. Here, Porter raised her jurisdictional objections in her motion to reconsider, but failed to prosecute her appeal of the trial court's adverse ruling to its conclusion. Porter is bound by the prior adjudication of her jurisdictional objections, and cannot reassert the same objections now.

Before: Division One: Alok Ahuja, Presiding Judge, Harold L. Lowenstein, Judge and Thomas H. Newton, Chief Judge

Opinion by: Alok Ahuja, Judge

March 29, 2010

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.
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